

is due, the importer should contact Customs and Border Protection officials at the port of entry, not the Department of Commerce.

[47 FR 32517, July 28, 1982, as amended at 66 FR 28834, May 25, 2001; 74 FR 30463, June 26, 2009]

§301.9 Uses and disposition of instruments entered under subheading 9810.00.60, HTSUS.

(a) An instrument granted duty-free entry may be transferred from the applicant institution to another eligible institution provided the receiving institution agrees not to use the instrument for commercial purposes within 5 years of the date of entry of the instrument. In such cases title to the instrument must be transferred directly between the institutions involved. An institution transferring a foreign instrument entered under subheading 9810.00.60, HTSUS within 5 years of its entry shall so inform the CBP Port in writing and shall include the following information:

- (1) The name and address of the transferring institution.
- (2) The name and address of the transferee.
- (3) The date of transfer.
- (4) A detailed description of the instrument.
- (5) The serial number of the instrument and any accompanying accessories.
- (6) The entry number, date of entry, and port of entry of the instrument.

(b) Whenever the circumstances warrant, and occasionally in any event, the fact of continued use for 5 years for noncommercial purposes by the applicant institution shall be verified by Customs and Border Protection.

(c) If an instrument is transferred in a manner other than specified above or is used for commercial purposes within 5 years of entry, the institution for which such instrument was entered shall promptly notify the Customs and Border Protection officials at the Port and shall be liable for the payment of duty in an amount determined on the basis of its condition as imported and the rate applicable to it.

[47 FR 32517, July 28, 1982, as amended at 66 FR 28834, May 25, 2001; 74 FR 30463, June 26, 2009]

§301.10 Importation of repair components and maintenance tools under HTSUS subheadings 9810.00.65 and 9810.00.67 for instruments previously the subject of an entry liquidated under subheading 9810.00.60, HTSUS.

(a) An institution owning an instrument that was the subject of an entry liquidated duty-free under subheading 9810.00.60, HTSUS, that wishes to enter repair components or maintenance tools for that instrument may do so without regard to the application procedures required for entry under subheading 9810.00.60, HTSUS. The institution must certify to Customs and Border Protection officials at the port of entry that such components are repair components for that instrument under subheading 9810.00.65, HTSUS, or that the tools are maintenance tools necessary for the repair, checking, gauging or maintenance of that instrument under subheading 9810.00.67, HTSUS.

(b) Instruments entered under subheading 9810.00.60, HTSUS, and subsequently returned to the foreign manufacturer for repair, replacement or modification are not covered by subheading 9810.00.65 or 9810.00.67, HTSUS, although they may, upon return to the United States, be eligible for a reduced duty payment under subheading 9802.00.40 or 9802.00.50, HTSUS (covering articles exported for repairs or alterations) or may be made the subject of a new application under subheading 9810.00.60, HTSUS.

[66 FR 28834, May 25, 2001, as amended at 74 FR 30463, June 26, 2009]

PART 302 [RESERVED]

PART 303—WATCHES, WATCH MOVEMENTS AND JEWELRY PROGRAM

Subpart A—Watches and Watch Movements

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AUTHORITY: Pub. L. 97-446, 96 Stat. 2331 (19 U.S.C. 1202, note); Pub. L. 103-465, 108 Stat. 4991; Pub. L. 94-241, 90 Stat. 263 (48 U.S.C. 1681, note); Pub. L. 106-36, 113 Stat. 167; Pub. L. 108-429, 118 Stat. 2582.

SOURCE: 49 FR 17740, Apr. 25, 1984, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 303 appear at 68 FR 56555, Oct. 1, 2003.

Subpart A—Watches and Watch Movements

§ 303.1 Purpose.

(a) This part implements the responsibilities of the Secretaries of Commerce and the Interior (“the Secretaries”) under Pub. L. 97-446, enacted on 12 January 1983, which substantially amended Pub. L. 89-805, enacted 10 November 1966, amended by Pub. L. 94-88, enacted 8 August 1975, and amended by Pub. L. 94-241, enacted 24 March 1976, amended by Public Law 103-465, enacted 8 December 1994 and amended by Public Law 108-429 enacted 3 December 2004. The law provides for exemption from duty of territorial watches and watch movements without regard to the value of the foreign materials they contain, if they conform with the provisions of U.S. Legal Note 5 to Chapter 91 of the Harmonized Tariff Schedule of the United States (“91/5”). 91/5 denies this benefit to articles containing any material which is the product of any country with respect to which Column

2 rates of duty apply; authorizes the Secretaries to establish the total quantity of such articles, provided that the quantity so established does not exceed 10,000,000 units or one-ninth of apparent domestic consumption, whichever is greater, and provided also that the quantity is not decreased by more than ten percent nor increased by more than twenty percent (or to more than 7,000,000 units, whichever is greater) of the quantity established in the previous year.

(b) The law directs the International Trade Commission to determine apparent domestic consumption for the preceding calendar year in the first year U.S. insular imports of watches and watch movements exceed 9,000,000 units. 91/5 authorizes the Secretaries to establish territorial shares of the overall duty-exemption within specified limits; and provides for the annual allocation of the duty-exemption among insular watch producers equitably and on the basis of allocation criteria, including minimum assembly requirements, that will reasonably maximize the net amount of direct economic benefits to the insular possessions.

(c) The amended law also provides for the issuance to producers of certificates entitling the holder (or any transferee) to obtain duty refunds on any article imported into the customs territory of the United States duty paid except for any article containing a material which is the product of a country to which column 2 rates of duty apply. The amounts of these certificates may not exceed specified percentages of the producers’ verified creditable wages in the insular possessions (90% of wages paid for the production of the first 300,000 units and declining percentages, established by the Secretaries, of wages paid for incremental production up to 750,000 units by each producer) nor an aggregate annual amount for all certificates exceeding \$5,000,000 adjusted for growth by the ratio of the previous year’s gross national product to the gross national product in 1982. Refund requests are governed by regulations issued by the Department of Homeland Security. The Secretaries are authorized to issue regulations necessary to carry out their duties under additional U.S. note 5 to

chapter 91 of the Harmonized Tariff Schedule of the United States, HTSUS and may cancel or restrict the license or certificate of any insular manufacturer found violating the regulations.

[49 FR 17740, Apr. 25, 1984, as amended at 50 FR 43568, Oct. 28, 1985; 53 FR 52994, Dec. 30, 1988; 61 FR 55884, Oct. 30, 1996; 70 FR 67647, Nov. 8, 2005; 72 FR 16713, Apr. 5, 2007]

§ 303.2 Definitions and forms.

(a) *Definitions.* Unless the context indicates otherwise:

(1) *Act* means Pub. L. 97-446, enacted January 12, 1983 (19 U.S.C. 1202), 96 Stat. 2329, as amended by Pub. L. 103-465, enacted on December 8, 1994, 108 Stat. 4991, Public Law 108-429, enacted on 3 December 2004, 118 Stat. 2582.

(2) *Secretaries* means the Secretary of Commerce and the Secretary of Interior or their delegates, acting jointly.

(3) *Director* means the Director of the Statutory Import Programs Staff, International Trade Administration, U.S. Department of Commerce.

(4) *Sale or transfer of a business* means the sale or transfer of control, whether temporary or permanent, over a firm to which a duty-exemption has been allocated, to any other firm, corporation, partnership, person or other legal entity by any means whatsoever, including, but not limited to, merger and transfer of stock, assets or voting trusts.

(5) *New firm* is a watch firm not affiliated through ownership or control with any other watch duty-refund recipient. In assessing whether persons or parties are affiliated, the Secretaries will consider the following factors, among others: stock ownership; corporate or family groupings; franchise or joint venture agreements; debt financing; and close supplier relationships. The Secretaries may not find that control exists on the basis of these factors unless the relationship has the potential to affect decisions concerning production, pricing, or cost. Also, no watch duty-refund recipient may own or control more than one jewelry duty-refund recipient. A new entrant is a new watch firm which has received an allocation.

(6) *Producer* means a duty-exemption holder which has maintained its eligi-

bility for further allocations by complying with these regulations.

(7) *Established industry* means all producers, including new entrants, that have maintained their eligibility for further allocations.

(8) *Territories, territorial, and insular possessions* refer to the insular possessions of the United States (i.e., the U.S. Virgin Islands, Guam, and American Samoa and the Northern Mariana Islands).

(9) *Duty-exemption* refers to the authorization of duty-free entry of a specified number of watches and watch movements into the Customs Territory of the United States.

(10) *Total annual duty-exemption* refers to the entire quantity of watches or watch movements which may enter duty-free into the customs territory of the United States from the territories under 91/5 in a calendar year, as determined by the Secretaries or by the International Trade Commission in accordance with the Act.

(11) *Territorial distribution* refers to the apportionment by the Secretaries of the total annual duty-exemption among the separate territories; *territorial share* means the portion consigned to each territory by this apportionment.

(12) *Allocation* refers to the distribution of all parts of a territorial share, or a portion thereof, among the several producers in a territory.

(13) *Creditable wages* and associated, creditable fringe benefits and creditable duty differentials eligible for the duty refund benefit include, but are not limited to, the following:

(i) Wages up to an amount equal to 65 percent of the contribution and benefit base for Social Security, as defined in the Social Security Act for the year in which wages were earned, paid to permanent residents of the insular possessions employed in a firm's 91/5 watch and watch movement program.

(A) Wages paid for the repair of watches up to an amount equal to 85 percent of the firm's total creditable wages.

(B) Wages paid to watch and watch movement assembly workers involved in the complete assembly of watches and watch movements which have entered the United States duty-free and

have complied with the laws and regulations governing the program.

(C) Wages paid to watch and watch movement assembly workers involved in the complete assembly of watches, excluding the movement, only in situations where the desired movement can not be purchased unassembled and the producer has documentation establishing this.

(D) Wages paid to those persons engaged in the day-to-day assembly operations on the premises of the company office, wages paid to administrative employees working on the premises of the company office, wages paid to security employees and wages paid to servicing and maintenance employees if these services are integral to the assembly and manufacturing operations and the employees are working on the premises of the company office.

(E) Wages paid to persons engaged in both creditable and non-creditable assembly and repair operations may be credited proportionally provided the firm maintains production, shipping and payroll records adequate for the Departments' verification of the creditable portion.

(F) Wages paid to new permanent residents who have met the requirements of permanent residency in accordance with the Departments' regulations, along with meeting all other creditable wage requirements of the regulations, which must be documented and verified to the satisfaction of the Secretaries.

(ii) The combined creditable amount of individual health and life insurance per year, for each full-time permanent resident employee who works on the premises of the company office and whose wages qualify as creditable, may not exceed 130 percent of the "weighted average" yearly federal employee health insurance, which is calculated from the individual health plans weighted by the number of individual contracts in each plan. The yearly amount is calculated by the Office of Personnel Management and includes the "weighted average" of all individual health insurance costs for federal employees throughout the United States. The maximum life insurance allowed within this combined amount is \$50,000 for each employee. Only dur-

ing the time employees are earning creditable wages are they entitled to health and life insurance duty refund benefits under the program.

(A) The combined creditable amount of family health and life insurance per year, for each full-time permanent resident employee who works on the premises of the company office and whose wages qualify as creditable, may not exceed 150 percent of the "weighted average" yearly federal employee health insurance, which is calculated from the family health plans weighted by the number of family contracts in each plan. The yearly amount is calculated by the Office of Personnel Management and includes the "weighted average" of all family health insurance costs for federal employees throughout the United States. The maximum life insurance allowed within this combined amount is \$50,000 for each employee. Only during the time employees are earning creditable wages are they entitled to health and life insurance duty refund benefits under the program.

(B) The creditable pension benefit, for each full-time permanent resident employee who works on the premises of the company office and whose wages qualify as creditable, is up to 3 percent of the employee's wages unless the employee's wages exceed the maximum annual creditable wage allowed under the program (see paragraph (a)(13)(i) of this section). An employee earning more than the maximum creditable wage allowed under the program will be eligible for only 3 percent of the maximum creditable wage. Only during the time employees are earning creditable wages are they entitled to pension duty refund benefits under the program.

(iii) If tariffs on watches and watch movements are reduced, then companies would be required to provide the annual aggregate data by individual HTSUS watch tariff numbers for the following components contained therein: the quantity and value of watch cases, the quantity of movements, the quantity and value of each type of strap, bracelet or band, and the quantity and value of batteries shipped free of duty into the United States. If discrete watch movements are shipped

free of duty into the United States, then the annual aggregate quantity by individual HTSUS movement tariff numbers would also be required along with the value of each battery if it is contained within. These data would be used to calculate the annual duty rate before each HTSUS tariff reduction, and the annual duty rate after the HTSUS tariff reduction. The amount of the difference would be creditable toward the duty refund. The tariff information would only be collected and used in the calculation of the annual duty-refund certificate and would not be used in the calculation of the mid-year duty-refund.

(14) Non-creditable wages and associated non-creditable fringe benefits ineligible for the duty refund benefit include, but are not limited to, the following:

(i) Wages over 65 percent of the contribution and benefit base for Social Security, as defined in the Social Security Act for the year in which wages were earned, paid to permanent residents of the territories employed in a firm's 91/5 watch and watch movement program.

(A) Wages paid for the repair of watches in an amount over 85 percent of the firm's total creditable wages.

(B) Wages paid for the assembly of watches and watch movements which are shipped outside the customs territory of the United States; wages paid for the assembly of watches and watch movements that do not meet the regulatory assembly requirements; or wages paid for the assembly of watches or watch movements that contain HTSUS column 2 components.

(C) Wages paid for the complete assembly of watches, excluding the movement, when the desired movement can be purchased unassembled, if the producer does not have adequate documentation, demonstrating to the satisfaction of the Secretaries, that the movement could not be purchased unassembled whether or not it is entering the United States.

(D) Wages paid to persons not engaged in the day-to-day assembly operations on the premises of the company office; wages paid to any outside consultants; wages paid to outside the office personnel, including but not lim-

ited to, lawyers, gardeners, construction workers, and accountants; wages paid to employees not working on the premises of the company office; and wages paid to employees who do not qualify as permanent residents in accordance with the Departments' regulations.

(E) Wages paid to persons engaged in both creditable and non-creditable assembly and repair operations if the producer does not maintain production, shipping and payroll records adequate for the Departments' verification of the creditable portion.

(ii) Any costs, for the year in which the wages were paid, of the combined creditable amount of individual health and life insurance for employees over 130 percent of the "weighted average" yearly individual health insurance costs for all federal employees. The cost of any life insurance over the \$50,000 limit for each employee. Any health and life insurance costs during the time an employee is not earning creditable wages.

(A) Any costs, for the year in which the wages were paid, of the combined creditable amount of family health and life insurance for employees over 150 percent of the "weighted average" yearly family health insurance costs for all federal employee. The cost of any life insurance over the \$50,000 limit for each employee. Any health and life insurance costs during the time an employee is not earning creditable wages.

(B) Any pension benefits that were not based on associated creditable wages. The cost of any pension benefit per employee over 3 percent of the employee's creditable wages unless the employee's wages exceed the maximum annual creditable annual maximum creditable wage allowed under the program (see paragraph (a)(13)(i) of this section). Employees earning over the maximum creditable wage allowed under the program would have a creditable annual pension benefit of up to 3 percent of the maximum creditable wage and wages over 3 percent of the maximum creditable wage would not be creditable.

(15) *Non-91/5 watches and watch movements* include, but are not limited to, watches and movements which are liquidated as dutiable by the Bureau of

Customs and Border Protection but do not include, for purposes of the duty refund, watches that are completely assembled in the insular possessions, with the exception of a desired movement if the movement cannot be purchased in an unassembled condition; contains any material which is the product of any country with respect to which Column 2 rates of duty apply; are ineligible for duty-free treatment pursuant to law or regulation; or are units the assembly of which the Departments have determined not to involve substantial and meaningful work in the territories (as elsewhere defined in these regulations).

(16) *Discrete movements and components* means screws, parts, components and subassemblies not assembled together with another part, component or subassembly at the time of importation into the territory. (A mainplate containing set jewels or shock devices, together with other parts, would be considered a single discrete component, as would a barrel bridge subassembly.)

(17) *Permanent resident* means a person with one residence which is in the insular possessions or a person with one or more residences outside the insular possessions who meets criteria that include maintaining his or her domicile in the insular possessions, residing (*i.e.*, be physically present for at least 183 days within a continuous 365 day period) and working in the territory at a program company, and maintaining his or her primary office for day-to-day work in the insular possessions.

(b) *Forms*—(1) *ITA-334P “Application for License to Enter Watches and Watch Movements into the Customs Territory of the United States.”* This form must be completed annually by all producers desiring to receive an annual allocation. It is also used, with appropriate special instructions for its completion, by new firms applying for duty-exemptions and by producers who wish to receive the duty refund in installments on a biannual basis.

(2) *ITA-333 “License to Enter Watches and Watch Movements into the Customs Territory of the United States.”* This form is issued by the Director to producers who have received an allocation

and constitutes authorization for issuing specific shipment permits by the territorial governments. It is also used to record the balance of a producer's remaining duty-exemptions after each shipment permit is issued.

(3) *ITA-340 “Permit to Enter Watches and Watch Movements into the Customs Territory of the United States.”* This form may be obtained, by producers holding a valid license, from the territorial government or may be produced by the licensee in an approved computerized format or any other medium or format approved by the Departments of Commerce and the Interior. The completed form authorizes duty-free entry of a specified amount of watches or watch movements at a specified U.S. Customs port.

(4) *ITA-360P “Certificate of Entitlement to Secure the Refund of Duties on Articles that Entered the Customs Territory of The United State Duty Paid.”* This document authorizes an insular watch producer to request the refund of duties on imports of articles that entered the customs territory of the United States duty paid, up to the specified value of the certificate. Certificates may be used to obtain duty refunds only when presented with a properly executed Form ITA-361P.

(5) *ITA-361P “Request for Refund of Duties on Articles that Entered the Customs Territory of the United States Duty Paid.”* This form must be completed to obtain the refund of duties authorized by the Director through Form ITA-360P. After authentication by the Department of Commerce, it may be used for the refund of duties on items which were entered into the customs territory of the United States duty paid during a specified time period. Copies of the appropriate Customs entries must be provided with this form to establish a basis for issuing the claimed amounts. The forms may also be used to transfer all or part of the producer's

entitlement to another party. (See § 303.12.)

(The information collection requirements in paragraph (b)(1) were approved by the Office of Management and Budget under control number 0625-0040. The information collection requirements in paragraphs (b) (4) through (6) were approved under control number 0625-0134)

[49 FR 17740, Apr. 25, 1984, as amended at 50 FR 43568, Oct. 28, 1985; 53 FR 52994, Dec. 30, 1988; 56 FR 9621, Mar. 7, 1991; 61 FR 55884, 55885, Oct. 30, 1996; 65 FR 8049, Feb. 17, 2000; 66 FR 34812, July 2, 2001; 67 FR 77408, Dec. 18, 2002; 68 FR 56555, Oct. 1, 2003; 70 FR 67647, Nov. 8, 2005; 72 FR 16714, Apr. 5, 2007; 73 FR 62881, Oct. 22, 2008]

§ 303.3 Determination of the total annual duty-exemption.

(a) *Procedure for determination.* If, after considering the productive capacity of the territorial watch industry and the economic interests of the territories, the Secretaries determine that the amount of the total annual duty-exemption, or the territorial shares of the total amount, should be changed, they shall publish in the FEDERAL REGISTER a proposed limit on the quantity of watch units which may enter duty-free into the customs territory of the United States and proposed territorial shares thereof and, after considering comments, establish the limit and shares by FEDERAL REGISTER notice. If the Secretaries take no action under this section, they shall make the allocations in accordance with the limit and shares last established by this procedure.

(b) *Standards for determination.* (1) Notwithstanding paragraph (b)(2) of this section, the limit established for any year may be 7,000,000 units if the limit established for the preceding year was a smaller amount.

(2) Subject to paragraph (c) of this section, the total annual duty-exemption shall not be decreased by more than 10% of the quantity established for the preceding calendar year, or increased, if the resultant total is larger than 7,000,000, by more than 20% of the quantity established for the calendar year immediately preceding.

(3) The Secretaries shall determine the limit after considering the interests of the territories; the domestic or international trade policy objectives of

the United States; the need to maintain the competitive nature of the territorial industry; the total contribution of the industry to the economic well-being of the territories; and the territorial industry's utilization of the total duty-exemption established in the preceding year.

(c) *Determinations based on consumption.* (1) The Secretaries shall notify the International Trade Commission whenever they have reason to believe duty-free watch imports from the territories will exceed 9,000,000 units, or whenever they make a preliminary determination that the total annual duty-exemption should exceed 10,000,000 units.

(2) In addition to the limitations in paragraph (b) of this section, the Secretaries shall not establish a limit exceeding one-ninth of apparent domestic consumption if such consumption, as determined by International Trade Commission, exceeds 90 million units.

[49 FR 17740, Apr. 25, 1984, as amended at 50 FR 7170, Feb. 21, 1985; 50 FR 43568, Oct. 28, 1985; 53 FR 52994, Dec. 30, 1988]

§ 303.4 Determination of territorial distribution.

(a) *Procedure for determination.* The Secretaries shall determine the territorial shares concurrently with their determination of the total annual duty exemption, and in the same manner (see § 303.3, above).

(b) *Standards for determination—(1) Limitations.* A territorial share may not be reduced by more than 500,000 units in any calendar year. No territorial share shall be less than 500,000 units.

(2) *Criteria for setting precise quantities.* The Secretaries shall determine the precise quantities after considering, *inter alia*, the territorial capacity to produce and ship watch units. The Secretaries shall further bear in mind the aggregate benefits to the territories, such as creditable wages paid, creditable wages per unit exported, and corporate income tax payments.

(3) *Limitations on reduction of share.* The Secretaries shall not reduce a territory's share if its producers use 85% or more of the quantity distributed to that territory in the immediately preceding year, except in the case of a

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major increase or decrease in the number of producers in a territory or if they believe that a territorial industry will decrease production by more than 15% from the total of the preceding year.

(4) *Standby redistribution authority.* The Secretaries may redistribute territorial shares if such action is warranted by circumstances unforeseen at the time of the initial distributions, such as that a territory will use less than 80% of its total by the end of a calendar year, or if a redistribution is necessary to maintain the competitive nature of the territorial industries.

[49 FR 17740, Apr. 25, 1984, as amended at 50 FR 7170, Feb. 21, 1985]

§ 303.5 Application for annual allocations of duty-exemptions and duty-refunds.

(a) Application forms (ITA-334P) shall be furnished to producers by January 1, and must be completed and returned to the Director no later than January 31, of each calendar year.

(b) All data supplied are subject to verification by the Secretaries and no allocation or duty-refund certificate shall be made to producer until the Secretaries are satisfied that the data are accurate. To verify the data, representatives of the Secretaries shall have access to relevant company records including:

(1) Work sheets used to answer all questions on the application form;

(2) Original records from which such data are derived;

(3) Records pertaining to ownership and control of the company and to the satisfaction of eligibility requirements of duty-free treatment of its product by the Bureau of Customs and Border Protection;

(4) Records pertaining to corporate income taxes, gross receipts taxes and excise taxes paid by each producer in the territories on the basis of which a portion of each producer's annual allocation is or may be predicated;

(5) Customs, bank, payroll, including time cards, production records, and all shipping records including the importer of record number and proof of residency, as requested;

(6) Records on purchases of components, including documentation on the

purchase of any preassembled movements, which demonstrate that such movements could not have been purchased from the vendor in an unassembled condition, and records on the sales of insular watches and movements, including proof of payment; and

(7) Any other records in the possession of the parent or affiliated companies outside the territory pertaining to any aspect of the producer's 91/5 watch assembly operation.

(8) All records pertaining to health insurance, life insurance and pension benefits for each employee; and

(9) If HTSUS tariffs on watches and watch movements are reduced, records of the annual aggregate data by individual HTSUS watch tariff numbers for the following components contained therein would be required: the quantity and value of watch cases; the quantity of movements; the quantity and value of each type of strap, bracelet or band; and the quantity and value of batteries shipped free of duty into the United States. In addition, if applicable, records of the annual aggregate quantity of discrete watch movements shipped free of duty into the United States by HTSUS tariff number.

(c) Data verification shall be performed in the territories, unless other arrangements satisfactory to the Departments are made in advance, by the Secretaries' representatives by the end of February of each calendar year. It is the responsibility of each program producer to make the appropriate data available to the Departments' officials for the calendar year for which the annual verification is being performed and no further data, from the calendar year for which the audit is being completed, will be considered for benefits at any time after the audit has been completed. In the event of discrepancies between the application and substantiating data before the audit is complete, the Secretaries shall determine which data will be used in the calculation of the duty refund and allocations.

(d) Records subject to the requirements of paragraph (b), above, shall be

retained for a period of two years following their creation.

[49 FR 17740, Apr. 25, 1984, as amended at 50 FR 43568, Oct. 28, 1985; 53 FR 52994, Dec. 30, 1988; 68 FR 56556, Oct. 1, 2003; 70 FR 67648, Nov. 8, 2005; 72 FR 16714, Apr. 5, 2007]

§ 303.6 Allocation and reallocation of exemptions among producers.

(a) *Interim allocations.* As soon as practicable after January 1 of each year the Secretaries shall make an interim allocation to each producer equaling 70% of the number of watch units it has entered duty-free into the customs territory of the United States during the first eight months of the preceding calendar year, or any lesser amount requested in writing by the producer. The Secretaries may also issue a lesser amount if, in their judgment, the producer might otherwise receive an interim allocation in an amount greater than the producer's probable annual allocation. In calculating the interim allocations, the Director shall count only duty-free watches and watch movements verified by the Bureau of Customs and Border Protection, or verified by other means satisfactory to the Secretaries, as having been entered on or before August 31 of the preceding year. Interim allocations shall not be published.

(b) *Annual allocations.* (1) By March 1 of each year the Secretaries shall make annual allocations to the producers in accordance with the allocation formula based on data supplied in their annual application (Form ITA-334P) and verified by the Secretaries.

(2) The excess of a producer's duty-exemption earned under the allocation criteria over the amount formally requested by the producer shall be considered to have been relinquished voluntarily (see paragraph (f) below). A producer's request may be modified by written communication received by the Secretaries by February 28, or, at the discretion of the Secretaries, before the annual allocations are made. An allocation notice shall be published in the FEDERAL REGISTER.

(c) *Supplemental allocations.* At the request of a producer, the Secretaries may supplement a producer's interim allocation if the Secretaries determine the producer's interim allocation will

be used before the Secretaries can issue the annual allocation. Allocations to supplement a producer's annual allocation shall be made under the reallocation provisions prescribed below.

(d) *Allocations to new entrants.* In making interim and annual allocations to producers selected the preceding year as new entrants, the Secretaries shall take into account that such producers will not have had a full year's operation as a basis for computation of its duty-exemption. The Secretaries may make an interim or annual allocation to a new entrant even if the firm did not operate during the preceding calendar year.

(e) *Special allocations.* A producer may request a special allocation if unusual circumstances kept it from making duty-free shipments at a level comparable with its past record. In considering such requests, the Secretaries shall take into account the firm's proposed assembly operations; its record in contributing to the territorial economy; and its intentions and capacity to make meaningful contributions to the territory. They shall also first determine that the amount of the special allocation requested will not significantly affect the amounts allocated to other producers pursuant to § 303.6(b)(1).

(f) *Reallocations.* Duty-exemptions may become available for reallocation as a result of cancellation or reduction for cause, voluntary relinquishment or nonplacement of duty-exemption set aside for new entrants. At the request of a producer, the Secretaries may re-allocate such duty-exemptions among the remaining producers who can use additional quantities in a manner judged best for the economy of the territories. The Secretaries shall consider such factors as the wage and income tax contributions of the respective producers during the preceding year and the nature of the producer's present assembly operations. In addition, the Secretaries may consider other factors which, in their judgment, are relevant to determining that applications from new firms, in lieu of reallocations, should be considered for part or all of unused portions of the total duty exemptions. Such factors may include:

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(1) The ability of the established industry to use the duty-exemption;

(2) Whether the duty-exemption is sufficient to support new entrant operations;

(3) The impact upon the established industry if new entrants are selected, particularly with respect to the effect on local employment, tax contributions to the territorial government, and the ability of the established industry to maintain satisfactory production levels; and

(4) Whether additional new entrants offer the best prospect for adding economic benefits to the territory.

(g) Section 303.14 of this part contains the criteria and formulae used by the Secretaries in calculating each watch producer's annual watch duty-exemption allocation, and other special rules or provisions the Secretaries may periodically adopt to carry out their responsibilities in a timely manner while taking into account changing circumstances. References to duty-exemptions, unless otherwise indicated, are to the amount available for reallocation in the current calendar year. Specifications of or references to data or bases used in the calculation of current year allocations (e.g., economic contributions and shipments) are, unless indicated otherwise, those which were generated in the previous year.

(h) The Secretaries may propose changes to § 303.14 at any time they consider it necessary to fulfill their responsibilities. Normally, such changes will be proposed towards the end of each calendar year. Interested parties shall be given an opportunity to submit written comments on proposed changes.

[49 FR 17740, Apr. 25, 1984, as amended at 50 FR 43568, Oct. 28, 1985; 61 FR 55885, Oct. 30, 1996; 63 FR 5888, Feb. 5, 1998]

§ 303.7 Issuance of licenses and shipment permits.

(a) *Issuance of Licenses (ITA-333).* (1) Concurrently with annual allocations under § 303.5 the Director shall issue a non-transferable license (Form ITA-333) to each producer. The Director shall also issue a replacement license if a producer's allocation is reduced pursuant to § 303.6.

(2) Annual duty-exemption licenses shall be for only that portion of a producer's annual duty-exemption not previously licensed.

(3) If a producer's duty-exemption has been reduced, the Director shall not issue a replacement license for the reduced amount until the producer's previous license has been received for cancellation by the Director.

(4) A producer's license shall be used in their entirety, except when they expire or are cancelled, in order of their date of issuance, i.e., an interim license must be completely used before shipment permits can be issued against an interim supplemental license.

(5) Outstanding licenses issued by the Director automatically expire at midnight, December 31, of each calendar year. No unused allocation of duty-exemption may be carried over into the subsequent calendar year.

(6) The Director shall ensure that all licenses issued are conspicuously marked to show the type of license issued, the identity of the producer, and the year for which the license is valid. All licenses shall bear the signature of the Director.

(7) Each producer is responsible for the security of its licenses. The loss of a license shall be reported immediately to the Director. Defacing, tampering with, and unauthorized use of a license are forbidden.

(b) *Shipment Permit Requirements (ITA-340).* (1) Producers may obtain shipment permits from the territorial government officials designated by the Governor. Permits may also be produced in any computerized or other format or medium approved by the Departments. The permit is for use against a producer's valid duty-exemption license and a permit must be completed for every duty-free shipment.

(2) Each permit must specify the license and permit number, the number of watches and watch movements included in the shipment, the unused balance remaining on the producer's license, pertinent shipping information and must have the certification statement signed by an official of the licensee's company. A copy of the completed permit must be sent electronically or taken to the designated territorial government officials, no later than the day

of shipment, for confirmation that the producer's duty-exemption license has not been exceeded and that the permit is properly completed.

(3) The permit (form ITA-340) shall be filed with Customs along with the other required entry documents to receive duty-free treatment unless the importer or its representative clears the documentation through Customs' automated broker interface. Entries made electronically do not require the submission of a permit to Customs, but the shipment data must be maintained as part of a producer's recordkeeping responsibilities for the period prescribed by Customs' recordkeeping regulations. Bureau of Customs and Border Protection Import Specialists may request the documentation they deem appropriate to substantiate claims for duty-free treatment, allowing a reasonable amount of time for the importer to produce the permit.

[49 FR 17740, Apr. 25, 1984, as amended at 50 FR 43568, Oct. 28, 1985; 61 FR 55885, Oct. 30, 1996]

§ 303.8 Maintenance of duty-exemption entitlements.

(a) The Secretaries may order a producer to show cause within 30 days of receipt of the order why the duty-exemption to which the firm would otherwise be entitled should not be cancelled, in whole or in part, if:

(1) At any time after June 30 of the calendar year:

(i) A producer's assembly and shipment record provides a reasonable basis to conclude that the producer will use less than 80 percent of its total allocation by the end of the calendar year, *and*

(ii) The producer refuses a request from the Departments to relinquish that portion of its allocation which they conclude will not be used; *or*

(2) A producer fails to satisfy or fulfill any term, condition or representation, whether undertaken by itself or prescribed by the Departments, upon which receipt of allocation has been predicated or upon which the Departments have relied in connection with the sale or transfer of a business together with its allocation; *or*

(3) A producer, in the judgment of the Secretaries, has failed to make a mean-

ingful contribution to the territory for a period of two or more consecutive calendar years, when compared with the performance of the duty-free watch assembly industry in the territory as a whole. This comparison shall include the producer's quantitative use of its allocations, amount of direct labor employed in the assembly of watches and watch movements, and the net amount of corporate income taxes paid to the government of the territory. If the producer fails to satisfy the Secretaries as to why such action should not be taken, the firm's allocation shall be reduced or cancelled, whichever is appropriate under the show-cause order. The eligibility of a firm whose allocation has been cancelled to receive further allocations may also be terminated.

(b) The Secretaries may also issue a show-cause order to reduce or cancel a producer's allocation or production incentive certificate (see § 303.12, below), as appropriate, or to declare the producer ineligible to receive an allocation or certificate if it violates any regulation in this part, uses a form, license, permit, or certificate in an unauthorized manner, or fails to provide information or data required by these regulations or requested by the Secretaries or their delegates in the performance of their responsibilities.

(c) If a firm's allocation is reduced or cancelled, or if a firm voluntarily relinquishes a part of its allocation, the Secretaries may:

(1) Reallocate the allocation involved among the remaining producers in a manner best suited to contribute to the economy of the territory;

(2) Reallocate the allocation or part thereof to a new entrant applicant; or

(3) Do neither of the above if deemed in the best interest of the territories and the established industry.

[49 FR 17740, Apr. 25, 1984, as amended at 61 FR 55885, Oct. 31, 1996]

§ 303.9 Restrictions on the transfer of duty-exemptions.

(a) The sale or transfer of a duty-exemption from one firm to another shall not be permitted.

(b) The sale or transfer of a business together with its duty-exemption shall

be permitted with prior written notification to the Departments. Such notification shall be accompanied by certifications and representations, as appropriate, that:

(1) If the transferee is a subsidiary of or in any way affiliated with any other company engaged in the production of watch movements components being offered for sale to any territorial producer, the related company or companies will continue to offer such watch and watch movement components on equal terms and conditions to all willing buyers and shall not engage in any practice, in regard to the sale of components, that competitively disadvantages the non-affiliated territorial producers *vis-a-vis* the territorial subsidiary;

(2) The sale or transfer price for the business together with its duty-exemption does not include the capitalization of the duty-exemption *per se*;

(3) The transferee is neither directly or indirectly affiliated with any other territorial duty-exemption holder in any territory;

(4) The transferee will not modify the watch assembly operations of the duty-exemption firm in a manner that will significantly diminish its economic contributions to the territory.

(c) At the request of the Departments, the transferee shall permit representatives of the Departments to inspect whatever records are necessary to establish to their satisfaction that the certifications and representations contained in paragraph (b) of this section have been or are being met.

(d) Any transferee who is either unwilling or unable to make the certifications and representations specified in paragraph (b) of this section shall secure the Departments' approval in advance of the sale or transfer of the business together with its duty-exemption. The request for approval shall specify which of the certifications specified in paragraph (b) of this section the firm is unable or unwilling to make, and give reasons why such fact should not constitute a basis for the Departments' disapproval of the sale or transfer.

[49 FR 17740, Apr. 25, 1984, as amended at 50 FR 43568, Oct. 28, 1985]

§§ 303.10–303.11 [Reserved]

§ 303.12 Issuance and use of production incentive certificates.

(a) *Issuance of certificates.* (1) The total annual amount of the Certificate of Entitlement, Form ITA-360, may be divided and issued on a biannual basis. The first portion of the total annual certificate amount will be based on reported duty-free shipments and creditable wages, determined from the wages as reported on the employer's first two quarterly federal tax returns (941-SS), paid during the first six months of the calendar year, using the formula in § 303.14(c). The Departments require the receipt of the data by July 31 for each producer who wishes to receive an interim duty refund certificate. The interim duty refund certificate will be issued on or before August 31 of the same calendar year in which the wages were earned unless the Departments have unresolved questions. The process of determining the total annual amount of the duty refund will be based on verified creditable wages, duty-free shipments into the customs territory of the United States, creditable health insurance, life insurance and pension benefits and the duty differential, if watch tariffs have been reduced during the calendar year. The completed annual application (Form ITA-334P) shall be received by the Departments on or before January 31 and the annual verification of data and the calculation of each producer's total annual duty refund, based on the verified data, will continue to take place in February. Once the calculations for each producer's duty refund has been completed, the portion of the duty refund that has already been issued to each producer will be deducted from the total amount of each producer's annual duty refund amount. The duty refund certificate will continue to be issued by March 1 unless the Departments have unresolved questions.

(2) Certificates shall not be issued to more than one company in the territories owned or controlled by the same corporate entity.

(b) *Securities and handling of certificates.* (1) Certificate holders are responsible for the security of the certificates. The certificates shall be kept at

the territorial address of the insular producer or at another location having the advance approval of the Departments.

(2) All refund requests made pursuant to the certificates shall be entered on the reverse side of the certificate.

(3) Certificates shall be returned by registered, certified or express carrier mail to the Departments when:

(i) A refund is requested which exhausts the entitlement on the face of the certificate,

(ii) The certificate expires, or

(iii) The Departments request their return with good cause.

(4) Certificate entitlements may be transferred according to the procedures described in (c) of this section.

(c) *The use and transfer of certificate entitlements.* (1) Insular producers issued a certificate may request a refund by executing Form ITA-361P (see § 303.2(b)(5) and the instructions on the form). After authentication by the Department of Commerce, Form ITA-361P may be used to obtain duty refunds on articles that entered the customs territory of the United States duty paid except for any article containing a material which is the product of a country to which column 2 rates of duty apply. Articles for which duty refunds are claimed must have entered the customs territory of the United States during the two-year period prior to the issue date of the certificate or during the one-year period the certificate remains valid. Copies of the appropriate Customs entries must be provided with the refund request in order to establish a basis for issuing the claimed amounts. Certification regarding drawback claims and liquidated refunds relating to the presented entries is required from the claimant on the form.

(2) Regulations issued by the Bureau of Customs and Border Protection, U.S. Department of Homeland Security, govern the refund of duties under Public Law 97-446, as amended by Public Law 103-465 and Public Law 108-429. If the Departments receive information from the Bureau of Customs and Border Protection that a producer has made unauthorized use of any official form, they shall cancel the affected certificate.

(3) The insular producer may transfer a portion of all of its certificate entitlement to another party by entering in block C of Form ITA-361P the name and address of the party.

(4) After a Form ITA-361P transferring a certificate entitlement to a party other than the certificate holder has been authenticated by the Department of Commerce, the form may be exchanged for any consideration satisfactory to the two parties. In all cases, authenticated forms shall be transmitted to the certificate holder or its authorized custodian for disposition (see paragraph (b) above).

(5) All disputes concerning the use of an authenticated Form ITA-361P shall be referred to the Departments for resolution. Any party named on an authenticated Form ITA-361P shall be considered an "interested party" within the meaning of § 303.13 of this part.

[49 FR 17740, Apr. 25, 1984, as amended at 50 FR 43568, Oct. 28, 1985; 56 FR 9621, Mar. 7, 1991; 61 FR 55885, Oct. 30, 1996; 66 FR 34812, July 2, 2001; 70 FR 67648, Nov. 8, 2005; 72 FR 16714, Apr. 5, 2007]

§ 303.13 Appeals.

(a) Any official decision or action relating to the allocation of duty-exemptions or to the issuance or use of production incentive certificates may be appealed to the Secretaries by any interested party. Such appeals must be received within 30 days of the date on which the decision was made or the action taken in accordance with the procedures set forth in paragraph (b) of this section. Interested parties may petition for the issuance of a rule, or amendment or repeal of a rule issued by the Secretaries. Interested parties may also petition for relief from the application of any rule on the basis of hardship or extraordinary circumstances resulting in the inability of the petitioner to comply with the rule.

(b) Petitions shall bear the name and address of the petitioner and the name and address of the principal attorney or authorized representative (if any) for the party concerned. They shall be addressed to the Secretaries and filed in one original and two copies with the U.S. Department of Commerce, Import Administration, International Trade

Administration, Washington, D.C. 20230, Attention: Statutory Import Programs Staff. Petitions shall contain the following:

(1) A reference to the decision, action or rule which is the subject of the petition;

(2) A short statement of the interest of the petitioner;

(3) A statement of the facts as seen by the petitioner;

(4) The petitioner's argument as to the points of law, policy of fact. In cases where policy error is contended, the alleged error together with the policy the submitting party advocates as the correct one should be described in full;

(5) A conclusion specifying the action that the petitioner believes the Secretaries should take.

(c) The Secretaries may at their discretion schedule a hearing and invite the participation of other interested parties.

(d) The Secretaries shall communicate their decision which shall be final, to the petitioner by registered mail.

(e) If the outcome of any petition materially affects the amount of the petitioner's allocation and if the Secretaries' consideration of the petition continues during the calculation of the annual allocations, the Secretaries shall set aside a portion of the affected territorial share in an amount which, in their judgment, protects the petitioner's interest and shall allocate the remainder among the other producers.

[49 FR 17740, Apr. 25, 1984, as amended at 56 FR 9622, Mar. 7, 1991; 72 FR 16714, Apr. 5, 2007]

§ 303.14 Allocation factors, duty refund calculations and miscellaneous provisions.

(a) *The allocation formula.* (1) Except as provided in (a)(2) of this section, the territorial shares (excluding any amount set aside for possible new entrants) shall be allocated among the several producers in each territory in accordance with the following formula:

(i) Fifty percent of the territorial share shall be allocated on the basis of the net dollar amount of economic contributions to the territory consisting of the dollar amount of creditable wages, up to an amount equal to 65% of

the contribution and benefit base for Social Security as defined in the Social Security Act for the year in which the wages were earned, paid by each producer to territorial residents, plus the dollar amount of income taxes (excluding penalty and interest payments and deducting any income tax refunds and subsidies paid by the territorial government), and

(ii) Fifty percent of the territorial share shall be allocated on the basis of the number of units of watches and watch movements assembled in the territory and entered by each producer duty-free into the customs territory of the United States.

(2) If there is only one producer in a territory, the entire territorial share, excluding any amount set aside for possible new entrants, may be allocated without recourse to any distributive formula.

(b) *Minimum assembly requirements and prohibition of preferential supply relationship.* (1) No insular watch movement or watch may be entered free of duty into the customs territory of the United States unless the producer used 30 or more discrete parts and components to assemble a mechanical watch movement and 33 or more discrete parts and components to assemble a mechanical watch.

(2) Quartz analog watch movements must be assembled from parts knocked down to the maximum degree possible for the technical capabilities of the insular industry as a whole. The greatest degree of disassembly specified, for each manufacturer's brand and model, by any producer in any territory purchasing such brands and models shall constitute the disassembly required as a minimum for the industry as a whole.

(3) Watch movements and watches assembled from components with a value of more than \$300 for watch movements and \$3000 for watches shall not be eligible for duty-exemption upon entry into the U.S. Customs territory. Value means the value of the merchandise plus all charges and costs incurred up to the last point of shipment (i.e., prior to entry of the parts and components into the territory).

(4) No producer shall accept from any watch parts and components supplier advantages and preferences which

might result in a more favorable competitive position for itself vis-a-vis other territorial producers relying on the same supplier. Disputes under this paragraph may be resolved under the appeals procedures contained in § 303.13(b).

(c) *Calculation of the value of the mid-year production incentive certificates.* (1) The value of each producer's certificate shall equal the producer's average creditable wage per unit shipped during the first six months of the calendar year multiplied by the sum of:

- (i) The number of units shipped up to 300,000 units times a factor of 90%; plus
- (ii) Incremental units shipped up to 450,000 units times a factor of 85%; plus
- (iii) Incremental units shipped up to 600,000 units times a factor of 80%; plus
- (iv) Incremental units shipped up to 750,000 units times a factor of 75%.

(2) *Calculation of the value of the annual production incentive certificates.* The value of each producer's certificate shall equal the producer's average creditable benefit per unit based on creditable wages, health insurance, life insurance and pension benefits plus any duty differential, if applicable, averaged from the amount of duty free units shipped during the calendar year multiplied by the sum of the following to obtain the total verified amount of the annual duty-refund per company. This amount would then be adjusted by deducting the amount of the mid-year duty-refund already issued.

- (i) The number of units shipped up to 300,000 units times a factor of 90%; plus
- (ii) Incremental units shipped up to 450,000 units times a factor of 85%; plus
- (iii) Incremental units shipped up to 600,000 units times a factor of 80%; plus
- (iv) Incremental units shipped up to 750,000 units times a factor of 75%.

(3) The Departments may make adjustments for these data in the manner set forth in § 303.5(c).

(d) *New entrant invitations.* Applications from new firms are invited for any unused portion of any territorial share.

(e) *Territorial shares.* The shares of the total duty exemption are 1,866,000 for the Virgin Islands, 500,000 for Guam,

500,000 for American Samoa, and 500,000 for the Northern Mariana Islands.

[49 FR 17740, Apr. 25, 1984, as amended at 50 FR 43568, Oct. 28, 1985; 53 FR 17825, May 19, 1988; 53 FR 52679, Dec. 29, 1988; 53 FR 52994, Dec. 30, 1988; 56 FR 9622, Mar. 7, 1991; 58 FR 21348, Apr. 21, 1993; 59 FR 8847, 8848, Feb. 24, 1994; 61 FR 55885, Oct. 30, 1996; 63 FR 49667, Sept. 17, 1998; 65 FR 8049, Feb. 17, 2000; 69 FR 51533, Aug. 20, 2004; 72 FR 16714, Apr. 5, 2007]

Subpart B—Jewelry

SOURCE: 64 FR 67150, Dec. 1, 1999, unless otherwise noted.

§ 303.15 Purpose.

(a) This subpart implements the responsibilities of the Secretaries of Commerce and the Interior ("the Secretaries") under Pub. L. 106-36, enacted 25 June 1999 which substantially amended Pub. L. 97-446, enacted 12 January 1983, amended by Pub. L. 89-805, enacted 10 November 1966, amended by Pub. L. 94-88, enacted 8 August 1975, amended by Pub. L. 94-241, enacted 24 March 1976, and amended by Pub. L. 103-465, enacted 8 December 1994, and Public Law 108-429, enacted on 3 December 2004.

(b) The amended law provides for the issuance of certificates to insular jewelry producers who have met the requirements of the laws and regulations, entitling the holder (or any transferee) to obtain refunds of duties on any article imported into the customs territory of the United States duty paid except for any article containing a material which is the product of a country to which column 2 rates of duty apply. The amounts of these certificates may not exceed specified percentages of the producers' verified creditable wages in the insular possessions (90% of wages paid for the production of the first 300,000 duty-free units and declining percentages, established by the Secretaries, of wages paid for incremental production up to 10,000,000 units by each producer) nor an aggregate annual amount for all certificates exceeding \$5,000,000 adjusted for growth by the ratio of the previous year's gross national product to the gross national product in 1982. However, the law specifies that watch producer benefits are not to be diminished as a consequence

of extending the duty refund to jewelry manufacturers. In the event that the amount of the calculated duty refunds for watches and jewelry exceeds the total aggregate annual amount that is available, the watch producers shall receive their calculated amounts and the jewelry producers would receive amounts proportionately reduced from the remainder. Refund requests are governed by regulations issued by the Department of Homeland Security (see 19 CFR 7.4).

(c) Section 2401(a) of Pub. L. 106–36 and additional U.S. note 5 to chapter 91 of the HTSUS authorize the Secretaries to issue regulations necessary to carry out their duties. The Secretaries may cancel or restrict the certificate of any insular manufacturer found violating the regulations.

[49 FR 17740, Apr. 25, 1984, as amended at 70 FR 67648, Nov. 8, 2005; 72 FR 16715, Apr. 5, 2007; 73 FR 34857, June 19, 2008]

§ 303.16 Definitions and forms.

(a) *Definitions.* For purposes of the subpart, unless the context indicates otherwise:

(1) *Act* means Pub. L. 97–446, enacted 12 January 1983 (19 U.S.C. 1202), 96 Stat. 2329, as amended by Pub. L. 103–465, enacted on 8 December 1994, 108 Stat. 4991 and, as amended by Pub. L. 106–36, enacted on 25 June 1999, and Public Law 108–429, enacted on 3 December 2004.

(2) *Secretaries* means the Secretary of Commerce and the Secretary of the Interior or their delegates, acting jointly.

(3) *Director* means the Director of the Statutory Import Programs Staff, International Trade Administration, U.S. Department of Commerce.

(4) *Sale or transfer of a business* means the sale or transfer of control, whether temporary or permanent, over a firm which is eligible for a jewelry program duty-refund to any other firm, corporation, partnership, person or other legal entity by any means whatsoever, including, but not limited to, merger and transfer of stock, assets or voting trusts.

(5) *New firm* means a jewelry company which has requested in writing to the Secretaries permission to participate in the program. In addition to any other information required by the Sec-

retaries, new firm requests shall include a representation that the company agrees to abide by the laws and regulations of the program, an outline of the company's anticipated economic contribution to the territory (including the number of employees) and a statement as to whether the company is affiliated by ownership or control with any other watch or jewelry company in the insular possessions. The Secretaries will then review the request and make a decision based on the information provided and the economic contribution to the territory. A new jewelry firm may not be affiliated through ownership or control with any other jewelry duty-refund recipient. In assessing whether persons or parties are affiliated, the Secretaries will consider the following factors, among others: stock ownership; corporate or family groupings; franchise or joint venture agreements; debt financing; and close supplier relationships. The Secretaries may not find that control exists on the basis of these factors unless the relationship has the potential to affect decisions concerning production, pricing, or cost. Also, no jewelry duty-refund recipient may own or control more than one watch duty-refund recipient.

(6) *Jewelry producer* means a company, located in one of the insular territories (see paragraph (a)(8) of this section), that produces jewelry provided for in heading 7113, HTSUS, which meets all the Bureau of Customs and Border Protection requirements for duty-free entry set forth in General Note 3(a)(iv), HTSUS, and 19 CFR 7.3, and has maintained its eligibility for duty refund benefits by complying with these regulations.

(7) *Unit of Jewelry* means a single article (e.g., ring, bracelet, necklace), pair (e.g., cufflinks), gram for links which are sold in grams and stocked in grams, and other subassemblies and components in the customary unit of measure they are stocked and sold within the industry.

(8) *Territories, territorial and insular possessions* refers to the insular possessions of the United States (i.e., the U.S. Virgin Islands, Guam, American Samoa and the Northern Mariana Islands).

(9) Creditable wages and associated creditable fringe benefits and creditable duty differentials eligible for the duty refund benefit include, but are not limited to, the following:

(i) Wages up to an amount equal to 65 percent of the contribution and benefit base for Social Security, as defined in the Social Security Act for the year in which wages were earned, paid to permanent residents of the insular possessions employed in a firm's manufacture of HTSUS heading 7113 articles of jewelry which are a product of the insular possessions and have met the Bureau of Customs and Border Protection's criteria for duty-free entry into the United States, plus any wages paid for the repair of non-insular HTSUS heading 7113 jewelry up to an amount equal to 50 percent of the firm's total creditable wages.

(A) Wages paid to persons engaged in the day-to-day assembly operations at the company office, wages paid to administrative employees working on the premises of the company office, wages paid to security operations employees and wages paid to servicing and maintenance employees if these services are integral to the assembly and manufacturing operations and the employees are working on the premises of the company office.

(B) Wages paid to permanent residents who are employees of a new company involved in the jewelry assembly and jewelry manufacturing of HTSUS heading 7113 jewelry for up to 18 months after such jewelry company commences jewelry manufacturing or jewelry assembly operations in the insular possessions.

(C) Wages paid when a maximum of two program producers work on a single piece of HTSUS heading 7113 jewelry which entered the United States free of duty under the program. Wages paid by the two producers will be credited proportionally provided both producers demonstrate to the satisfaction of the Secretaries that they worked on the same piece of jewelry, the jewelry received duty-free treatment into the customs territory of the United States, and the producers maintained production and payroll records sufficient for the Departments' verification of the creditable wage portion (see § 303.17(b)).

(D) Wages paid to persons engaged in both creditable and non-creditable assembly and repair operations may be credited proportionally provided the firm maintains production, shipping and payroll records adequate for the Departments' verification of the creditable portion.

(E) Wages paid to new permanent residents who have met the requirements of permanent residency in accordance with the Departments' regulations along with meeting all other creditable wage requirements of the regulations, which must be documented and verified to the satisfaction of the Secretaries.

(ii) The combined creditable amount of individual health and life insurance per year, for each full-time permanent resident employee who works on the premises of the company office and whose wages qualify as creditable, may not exceed 130 percent of the "weighted average" yearly federal employee health insurance, which is calculated from the individual health plans weighted by the number of individual contracts in each plan. The yearly amount is calculated by the Office of Personnel Management and includes the "weighted average" of all individual health insurance costs for federal employees throughout the United States. The maximum life insurance allowed within this combined amount is \$50,000 for each employee. Only during the time employees are earning creditable wages are they entitled to health and life insurance duty refund benefits under the program.

(A) The combined creditable amount of family health and life insurance per year, for each full-time permanent resident employee who works on the premises of the company office and whose wages qualify as creditable, may not exceed 150 percent of the "weighted average" yearly federal employee health insurance, which is calculated from the family health plans weighted by the number of family contracts in each plan. The yearly amount is calculated by the Office of Personnel Management and includes the "weighted average" of all family health insurance costs for federal employees throughout the United States. The maximum life

insurance allowed within this combined amount is \$50,000 dollars for each employee. Only during the time employees are earning creditable wages are they entitled to health and life insurance duty refund benefits under the program.

(B) The creditable pension benefit, for each full-time permanent resident employee who works on the premises of the company office and whose wages qualify as creditable, is up to 3 percent of the employee's wages unless the employee's wages exceed the maximum annual creditable wage allowed under the program (see paragraph (a)(9)(i) of this section). An employee earning more than the maximum creditable wage allowed under the program will be eligible for only 3 percent of the maximum creditable wage. Only during the time employees are earning creditable wages are they entitled to pension duty refund benefits under the program.

(10) Non-creditable wages and associated non-creditable fringe benefits ineligible for the duty refund benefit include, but are not limited to, the following:

(i) Wages over 65 percent of the contribution and benefit base for Social Security, as defined in the Social Security Act for the year in which wages were earned, paid to permanent residents of the territories employed in a firm's 91/5 heading 7113, HTSUS, jewelry program.

(A) Wages paid for the repair of jewelry in an amount over 50 percent of the firm's total creditable wages.

(B) Wages paid to employees who are involved in assembling HTSUS heading 7113 jewelry beyond 18 months after such jewelry company commences jewelry manufacturing or jewelry assembly operations in the insular possessions if the jewelry does not meet the Bureau of Customs and Border Protection's substantial transformation requirements and other criteria for duty-free enter into the United States.

(C) Wages paid for the assembly and manufacturing of jewelry which is shipped to places outside the customs territory of the United States; wages paid for the assembly and manufacturing of jewelry that does not meet the regulatory assembly requirements;

or wages paid for the assembly and manufacture of jewelry that contain HTSUS column 2 components.

(D) Wages paid to those persons not engaged in the day-to-day assembly operations on the premises of the company office, wages paid to any outside consultants, wages paid to outside the office personnel, including but not limited to, lawyers, gardeners, construction workers and accountants; wages paid to employees not working on the premises of the company office; wages paid to employees working with a non-program producer to create a single piece of HTSUS heading 7113 jewelry whether or not it entered the United States free of duty; and wages paid to employees who do not qualify as permanent residents in accordance with the Departments' regulations.

(E) Wages paid to persons engaged in both creditable and non-creditable assembly and repair operations if the producer does not maintain production, shipping and payroll records adequate for the Departments' verification of the creditable portion.

(ii) Any costs, for the year in which the wages were paid, of the combined creditable amount of individual health and life insurance for employees over 130 percent of the "weighted average" yearly individual health insurance costs for all federal employees. The cost of any life insurance over the \$50,000 limit for each employee. Any health and life insurance costs during the time an employee is not earning creditable wages.

(A) Any costs, for the year in which the wages were paid, of the combined creditable amount of family health and life insurance for employees over 150 percent of the "weighted average" yearly family health insurance costs for all federal employee. The cost of any life insurance over the \$50,000 limit for each employee. Any health and life insurance costs during the time an employee is not earning creditable wages.

(B) Any pension benefits that were not based on associated creditable wages. The cost of any pension benefit per employee over 3 percent of the employee's creditable wages unless the employee's wages exceed the maximum annual creditable annual maximum

creditable wage allowed under the program (see paragraph (a)(9)(i) of this section). Employees earning over the maximum creditable wage allowed under the program would have a creditable annual pension benefit of up to 3 percent of the maximum creditable wage and wages over 3 percent of the maximum creditable wage would not be creditable.

(11) *Dutiable jewelry* includes jewelry which does not meet the requirements for duty-free entry under General Note 3(a)(iv), HTSUS, and 19 CFR 7.3, contains any material which is the product of any country with respect to which Column 2 rates of duty apply or is ineligible for duty-free treatment pursuant to other laws or regulations.

(12) *Permanent resident* means a person with one residence which is in the insular possessions or a person with one or more residences outside the insular possessions who meets criteria that include maintaining his or her domicile in the insular possessions, residing (*i.e.*, be physically present for at least 183 days within a continuous 365 day period year) and working in the territory at a program company, and maintaining his or her primary office for day-to-day work in the insular possessions.

(b) *Forms.* (1) *ITA—334P* “Annual Application for License to Enter Watches and Watch Movements into the Customs Territory of the United States.” The Director shall issue instructions for jewelry manufacturers on the completion of the relevant portions of the form. The form must be completed annually by all jewelry producers desiring to receive a duty refund and, with special instructions for its completion, by producers who wish to receive the total annual amount of the duty refund in installments on a biannual basis.

(2) *ITA—360P* “*Certificate of Entitlement to Secure the Refund of Duties on Articles that Entered the Customs Territory of The United State Duty Paid.*” This document authorizes an insular jewelry producer to request the refund of duties on imports of articles that entered the customs territory of the United States duty paid, with certain exceptions, up to the specified value of the certificate. Certificates may be used to obtain duty

refunds only when presented with a properly executed Form ITA-361P.

(3) *ITA-361P* “*Request for Refund of Duties on Articles that Entered the Customs Territory of the United States Duty Paid.*” This form must be completed to obtain the refund of duties authorized by the Director through Form ITA-360P. After authentication by the Department of Commerce, it may be used for the refund of duties on items which were entered into the customs territory of the United States duty paid during a specified time period. Copies of the appropriate Customs entries must be provided with this form to establish a basis for issuing the claimed amounts. The forms may also be used to transfer all or part of the producer's entitlement to another party (see Sec. 303.19(c)).

(The information collection requirements in paragraph (b)(1) were approved by the Office of Management and Budget under control number 0625-0040. The information collection requirements in paragraphs (b) (2) and (3) were approved under control number 0625-0134)

[64 FR 67150, Dec. 1, 1999, as amended at 65 FR 8049, Feb. 17, 2000; 66 FR 34812, July 2, 2001; 67 FR 77409, Dec. 18, 2202; 70 FR 67648, Nov. 8, 2005; 72 FR 16715, Apr. 5, 2007; 73 FR 62881, Oct. 22, 2008]

§ 303.17 Application for annual duty-refunds.

(a) Form ITA-334P shall be furnished to producers by January 1 and must be completed and returned to the Director no later than January 31 of each calendar year.

(b) All data supplied are subject to verification by the Secretaries and no duty refund shall be made to producers until the Secretaries are satisfied that the data are accurate. To verify the data, representatives of the Secretaries shall have access to relevant company records including, but not limited to:

(1) Work sheets used to answer all questions on the application form, as specified by the instructions;

(2) Original records from which such data are derived;

(3) Records pertaining to ownership and control of the company;

(4) Records pertaining to all duty-free and dutiable shipments of HTSUS 7113 jewelry, including Customs entry documents, or the certificate of origin

for the shipment, or, if a company did not receive such documents from Customs, a certification from the consignee that the jewelry shipment received duty-free treatment, or a certification from the producer, if the producer can attest that the jewelry shipment received duty-free treatment;

(5) Records pertaining to corporate income taxes, gross receipts taxes and excise taxes paid by each producer in the territories;

(6) Customs, bank, payroll, including time cards, production records, and all shipping records including the importer of record number and proof of residency, as requested;

(7) All records pertaining to health insurance, life insurance and pension benefits for each employee;

(8) Records on purchases of components and sales of jewelry, including proof of payment; and

(9) Any other records in the possession of the parent or affiliated companies outside the territory pertaining to any aspect of the producer's jewelry operations.

(c) Data verification shall be performed in the territories, unless other arrangements satisfactory to the Departments are made in advance, by the Secretaries' representatives by the end of February of each calendar year. In the event a company cannot substantiate the data in its application, the Secretaries shall determine which data will be used.

(d) Records subject to the requirements of paragraph (b) of this section, shall be retained for a period of two years following their creation.

[49 FR 17740, Apr. 25, 1984, as amended at 66 FR 34813, July 2, 2001; 70 FR 67650, Nov. 8, 2005; 72 FR 16715, Apr. 5, 2007]

§ 303.18 Sale or transfer of business.

(a) The sale or transfer of a business together with its duty refund entitlement shall be permitted with prior written notification to the Departments. Such notification shall be accompanied by certifications and representations, as appropriate, that:

(1) The transferee is neither directly nor indirectly affiliated with any other territorial duty refund jewelry recipient in any territory;

(2) The transferee will not modify the jewelry operations in a manner that will significantly diminish its economic contributions to the territory.

(b) At the request of the Departments, the transferee shall permit representatives of the Departments to inspect whatever records are necessary to establish to their satisfaction that the certifications and representations contained in paragraph (a) of this section have been or are being met.

(c) Any transferee who is either unwilling or unable to make the certifications and representations specified in paragraph (a) of this section shall secure the Departments' approval in advance of the sale or transfer of the business. The request for approval shall specify which of the certifications specified in paragraph (a) of this section the firm is unable or unwilling to make, and give reasons why such fact should not constitute a basis for the Departments' disapproval of the sale or transfer.

§ 303.19 Issuance and use of production incentive certificates.

(a) *Issuance of certificates.* (1) The total annual amount of the Certificate of Entitlement, Form ITA-360, may be divided and issued on a biannual basis. The first portion of the total annual certificate amount will be based on reported duty-free shipments and creditable wages, determined from the wages as reported on the employer's first two quarterly federal tax returns (941-SS), paid during the first six month of the calendar year, using the formula in § 303.20(b). The Departments require the receipt of the data by July 31 for each producer who wishes to receive an interim duty refund certificate. The interim duty refund certificate will be issued on or before August 31 of the same year in which the wages were earned unless the Departments have unresolved questions. The process of determining the total annual amount of the duty refund will be based on verified creditable wages, duty-free shipments into the customs territory of the United States, creditable health insurance, life insurance and pension benefits and the duty differential, if watch tariffs have been reduced during the calendar year. The

completed annual application (Form ITA-334P) shall be received by the Departments on or before January 31 and the annual verification of data and calculation of each producer's total annual duty refund, based on the verified data, will continue to take place in February. Once the calculations for each producer's duty refund has been completed, the portion of the duty refund that has already been issued to each producer will be deducted from the total amount of each producer's annual duty refund amount. The duty refund certificate will continue to be issued by March 1 unless the Departments have unresolved questions.

(2) Certificates shall not be issued to more than one jewelry company in the territories owned or controlled by the same corporate entity.

(b) *Security and handling of certificates.* (1) Certificate holders are responsible for the security of the certificates. The certificates shall be kept at the territorial address of the producer or at another location having the advance approval of the Departments.

(2) All refund requests made pursuant to the certificates shall be entered on the reverse side of the certificate.

(3) Certificates shall be returned by registered, certified or express carrier mail to the Department of Commerce when:

(i) A refund is requested which exhausts the entitlement on the face of the certificate,

(ii) The certificate expires, or

(iii) The Departments request their return with good cause.

(4) Certificate entitlements may be transferred according to the procedures described in paragraph (c) of this section.

(c) *The use and transfer of certificate entitlements.* (1) Insular producers issued a certificate may request a refund by executing Form ITA-361P (see § 303.16(b)(3)) and the instruction on the form). After authentication by the Department of Commerce, Form ITA-361P may be used to obtain duty refunds on article that entered the customs territory of the United States duty paid. Duties on an article which is the product of a country with respect to column 2 rates of duty apply may not be refunded Articles for which duty re-

funds are claimed must have entered the customs territory of the United States during the two-year period prior to the issue date of the certificate or during the one-year period the certificate remains valid. Copies of the appropriate Customs entries must be provided with the refund request in order to establish a basis for issuing the claimed amounts. Certification regarding drawback claims and liquidated refunds relating to the presented entries is required from the claimant on the form.

(2) Regulations issued by the Bureau of Customs and Border Protection, U.S. Department of Homeland Security, govern the refund of duties under 19 CFR 7.4. If the Departments receive information from the Bureau of Customs and Border Protection that a producer has made unauthorized use of any official form, they may cancel the affected certificate.

(3) The territorial producer may transfer a portion of all of its certificate entitlement to another party by entering in block C of Form ITA-361P the name and address of the party.

(4) After a Form ITA-361P transferring a certificate entitlement to a party other than the certificate holder has been authenticated by the Department of Commerce, the form may be exchanged for any consideration satisfactory to the two parties. In all cases, authenticated forms shall be transmitted to the certificate holder or its authorized custodian for disposition (see paragraph (b) of this section).

(5) All disputes concerning the use of an authenticated Form ITA-361P shall be referred to the Departments for resolution. Any party named on an authenticated Form ITA-361P shall be considered an "interested party" within the meaning of § 303.21 of this part.

[49 FR 17740, Apr. 25, 1984, as amended at 66 FR 34813, July 2, 2001; 70 FR 67650, Nov. 8, 2005; 72 FR 16715, Apr. 5, 2007]

§ 303.20 Duty refund calculations and miscellaneous provisions.

(a) Territorial jewelry producers are entitled to duty refund certificates only for jewelry that they produce which is provided for in heading 7113, HTSUS, is a product of a territory and otherwise meets the requirements for

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duty-free entry under General Note 3 (a)(iv), HTSUS, and 19 CFR 7.3.

(1) An article of jewelry is considered to be a product of a territory if:

(i) The article is wholly the growth or product of the territory; or

(ii) The article became a new and different article of commerce as a result of production or manufacture performed in the territories.

(2) Eighteen month exemption. Any article of jewelry provided for in HTSUS heading 7113, assembled in the insular possessions by a new entrant jewelry manufacturer shall be treated as a product of the insular possessions if such article is entered into the customs territory of the United States no later than 18 months after such producer commences jewelry manufacturing or jewelry assembly operations in the insular possessions.

(b) *Calculation of the value of the mid-year production incentive certificates.*(1) The value of each producer's certificate shall equal the producer's average creditable wage per unit shipped during the first six months of the calendar year multiplied by the sum of:

(i) The number of units shipped up to 300,000 units times a factor of 90%; plus

(ii) Incremental units shipped up to 3,533,334 units times a factor of 85%; plus

(iii) Incremental units shipped up to 6,766,667 units times a factor of 80%; plus

(iv) Incremental units shipped up to 10,000,000 units times a factor of 75%.

(2) *Calculation of the value of the annual production incentive certificates.* The value of each producer's certificate shall equal the producer's average creditable benefit per unit based on creditable wages, health insurance, life insurance and pension benefits averaged from the amount of duty free units shipped during the calendar year multiplied by the sum of the following to obtain the total verified amount of the annual duty-refund per company. This amount would then be adjusted by deducting the amount of the mid-year duty-refund already issued.

(i) The number of units shipped up to 300,000 units times a factor of 90%; plus

(ii) Incremental units shipped up to 3,533,334 units times a factor of 85%; plus

(iii) Incremental units shipped up to 6,766,667 units times a factor of 80%; plus

(iv) Incremental units shipped up to 10,000,000 units times a factor of 75%.

[64 FR 67150, Dec. 1, 1999, as amended at 70 FR 67650, Nov. 8, 2005; 72 FR 16715, Apr. 5, 2007; 73 FR 34857, June 19, 2008]

§ 303.21 Appeals.

(a) Any official decision or action relating to the issuance or use of production incentive certificates may be appealed to the Secretaries by any interested party. Such appeals must be received within 30 days of the date on which the decision was made or the action taken in accordance with the procedures set forth in paragraph (b) of this section. Interested parties may petition for the issuance of a rule, or amendment or repeal of a rule issued by the Secretaries. Interested parties may also petition for relief from the application of any rule on the basis of hardship or extraordinary circumstances resulting in the inability of the petitioner to comply with the rule.

(b) Petitions shall bear the name and address of the petitioner and the name and address of the principal attorney or authorized representative (if any) for the party concerned. They shall be addressed to the Secretaries and filed in one original and two copies with the U.S. Department of Commerce, Import Administration, International Trade Administration, Washington, DC 20230, Attention: Statutory Import Programs Staff. Petitions shall contain the following:

(1) A reference to the decision, action or rule which is the subject of the petition;

(2) A short statement of the interest of the petitioner;

(3) A statement of the facts as seen by the petitioner;

(4) The petitioner's argument as to the points of law, policy or fact. In cases where policy error is contended, the alleged error together with the policy the submitting party advocates as the correct one should be described in full;

(5) A conclusion specifying the action that the petitioner believes the Secretaries should take.

(c) The Secretaries may at their discretion schedule a hearing and invite the participation of other interested parties.

(d) The Secretaries shall communicate their decision, which shall be final, to the petitioner by registered, certified or express mail.

[64 FR 67150, Dec. 1, 1999, as amended at 72 FR 16716]

PART 310—OFFICIAL U.S. GOVERNMENT RECOGNITION OF AND PARTICIPATION IN INTERNATIONAL EXPOSITIONS HELD IN THE UNITED STATES

Sec.

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AUTHORITY: Pub. L. 91-269, 84 Stat. 271 (22 U.S.C. 2801 *et seq.*).

SOURCE: 40 FR 34107, Aug. 14, 1975, unless otherwise noted. Redesignated at 46 FR 57457, Nov. 24, 1981.

§ 310.1 Background and purpose.

The regulations in this part are issued under the authority of Pub. L. 91-269 (84 Stat. 271, 22 U.S.C. 2801 *et seq.*) which establishes an orderly procedure for Federal Government recognition of, and participation in, international expositions to be held in the United States. The Act provides, *inter alia*, that Federal recognition of an exposition is to be granted upon a finding by the President that such recognition will be in the national interest. In making this finding, the President is directed to consider, among other factors, a report from the Secretary of Commerce as to the purposes and reasons for an exposition and the extent of financial and other support to be provided by the State and local officials and business and community leaders where the exposition is to be held, and a report by the Secretary of State to

determine whether the exposition is qualified for registration under Bureau of International Expositions (BIE) rules. The BIE is an international organization established by the Paris Convention of 1928 (T.I.A.S. 6548 as amended by T.I.A.S. 6549) to regulate the conduct and scheduling of international expositions in which foreign nations are officially invited to participate. The BIE divides international expositions into different categories and types and requires each member nation to observe specified minimum time intervals in scheduling each of these categories and types of expositions.¹ Under BIE rules, member nations may not ordinarily participate in an international exposition unless such exposition has been approved by the BIE. The United States became a member of the BIE on April 30, 1968, upon ratification of the Paris Convention by the U.S. Senate (114 Cong. Rec. 11012).

¹The BIE defines a General Exposition of the First Category as an exposition dealing with progress achieved in a particular field applying to several branches of human activity at which the invited countries are obligated to construct national pavilions. A General Exposition of the Secondary Category is a similar exposition at which invited countries are not authorized to construct national pavilions, but occupy space provided by the exposition sponsors. Special Category Expositions are those dealing only with one particular technique, raw material, or basic need.

The BIE frequency rules require that an interval of 15 years must elapse between General Expositions of the First Category held in one country. General Expositions of the Second Category require an interval of 10 years. An interval of 5 years must ordinarily elapse between Special Category Expositions of the same kind in one country or three months between Special Category Expositions of different kinds. These frequency intervals are computed from the date of the opening of the exposition.

More detailed BIE classification criteria and regulations are contained in the Paris Convention of 1928, as amended in 1948 and 1966. Applicants not having a copy of the text of this convention may obtain one by writing the Director. (The Convention may soon be amended by a Protocol which has been approved by the BIE and ratified by the United States. This amendment would increase authorized frequencies or intervals for BIE approved expositions.)